

Sales of materials to construction contractors for incorporation into real estate owned by governmental bodies are exempt from Retailers' Occupation Tax and Use Tax. See 86 Ill. Adm. Code 130.2075(d). (This is a GIL.)

September 9, 2005

Dear Xxxxx:

This letter is in response to your letter dated July 6, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

In accordance with Illinois Regulation, Section 130.1001, we hereby request a private letter ruling of the application of, or exemption from, Illinois sales or use tax to the following series of transactions.

ABC is the sponsoring partner of XYZ, who has been awarded a contract by the U.S. Army Corps of Engineers to construct the [a] lock and dam system. I have been advised that the boundary between Illinois and STATE on the river is not in the middle of the river, as one might expect, and that STATE claims jurisdiction to the Illinois shoreline. That would logically indicate that the portion of any docks extending beyond the River shoreline near CITY, Illinois would lie within the state of STATE and that all barges used in the River would never enter the state of Illinois because they would remain in the water and docked or moored when not in use, and would not be subject to Illinois sales or use tax. Please confirm that XYZ is not subject to Illinois sales or use tax on any barges or tugs used on the River.

XYZ will have its mobile office complex at CITY, Illinois, and we have already applied for an Illinois Business Tax number. It is evident that all furniture, office equipment, and supplies used at the office will be subject to Illinois sales or use tax.

XYZ will have its lay-down yard, pre-cast yard, and marine skid-way on land within the state of Illinois because there is no access to this point of the river from the STATE shoreline. It is evident that the batch plant, forms, and other assets remaining on shore in Illinois are subject to the Illinois sales or use tax.

Illinois Regulation 86 Ill. Adm. Code 130.2075(d)(1) provides a sales and use tax exemption for materials permanently incorporated into real estate of the federal government. It is my interpretation that the permanent materials brought to the lay-down yard or pre-cast in the batch plant in Illinois and loaded on barges for installation into the lock and dam are exempt from Illinois sales and use tax, regardless if the dam is located in STATE and regardless of whether the materials are purchased from an Illinois retailer or an out of state retailer. Please confirm that XYZ is not subject to Illinois sales or use tax on these items.

Illinois Regulation 86 Ill. Adm. Code 150.310(a)(6) provides a sales and use tax exemption for personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside the state for use or consumption thereafter solely outside the state. 'Centralized purchasing' is defined as the procurement of tangible personal property by persons who purchase tangible personal property solely for use or consumption outside Illinois, who take delivery of that tangible personal property in Illinois and who temporarily store that tangible personal property in Illinois prior to transporting it outside the state for use or consumption solely outside Illinois. Please confirm that XYZ qualifies as a centralized purchaser with respect to any construction equipment delivered in Illinois and attached to or carried on the barges, and supplies and fuel delivered to the lay-down yard but consumed aboard the barges or equipment on the barges, in the performance of the construction activities.

Upon receipt of your concurrence of the sales and use tax exemptions, we will submit form ST-4, Application for Expanded Temporary Storage Permit.

If you have any questions please call me.

The nature of your questions is very fact specific. Legal Services is unable to provide a Private Letter Ruling without further information.

The question of where the Illinois/STATE border along the River is located was settled by the U.S. Supreme Court in the case of Illinois v. Kentucky, 500 U.S. 380, (1991). In that case, the Court held that the boundary is the line of the low-water mark of the northerly shore of the Ohio River as it existed in 1792.

Illinois sales tax applies to retail sales and use of tangible personal property within the Illinois border. However, you may want to review section 130.315 of the Department's regulations (86 Ill. Adm. Code 130.315) which provides that "notwithstanding the fact that such sales are at retail, the Retailers' Occupation Tax does not apply to sales of fuel consumed or used in the operation of ships, barges or vessels which are used primarily in or for the transportation of property or the conveyance of persons for hire on rivers bordering on this State if such fuel is delivered by the seller to the purchaser's barge, ship or vessel while it is afloat upon such bordering river."

In regard to your second question, the Department's regulation at 130.2075(d)(1) provides that sales of materials to construction contractors for incorporation into real estate owned by governmental bodies are exempt from Retailers' Occupation Tax and Use Tax. Please see 86 Ill. Adm. Code 130.1940 regarding construction contractors. To document the exemption from tax, the construction contractor must provide its suppliers with a certification stating that its purchases are for conversion into real estate under a contract with a governmental body and include the active exemption number issued by the Department to the governmental body. See subsection (d)(4) of Section 130.2075. Purchases by a construction contractor of tools, fuels, lumber for forms and other end use or consumption items are taxable sales no matter who the contractor's customer may be. See subsection (d)(3) of Section 130.2075.

In regard to your third question, the Department's regulation at 150.310(6) provides that the use of tangible personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside this State for use or consumption thereafter solely outside this State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. 86 Ill. Adm. Code 150.310(6). However, without knowing more about your activities, and knowing specifically whether the items purchased will be used outside the State, we are unable to confirm that the XYZ qualifies as a centralized purchaser

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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